

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

Case No. 7:19cv354

v.

SOUTHERN COAL CORPORATION;
A&G COAL CORPORATION;
JUSTICE COAL OF ALABAMA, LLC;
BLACK RIVER COAL, LLC; CHESTNUT
LAND HOLDINGS, LLC;
DOUBLE BONUS COAL COMPANY;
DYNAMIC ENERGY, INC; FOUR
STAR RESOURCES, LLC; FRONTIER
COAL COMPANY, INC; INFINITY
ENERGY, INC; JUSTICE ENERGY
COMPANY, INC; JUSTICE
HIGWALL MINING, INC;
KENTUCKY FUEL CORP.;
KEYSTONE SERVICES INDUSTRIES,
INC.; M&P SERVICES, INC.; NINE
MILE MINING COMPANY, INC.;
NUFAC MINING COMPANY, INC.;
PAY CAR MINING, INC.; PREMIUM
COAL COMPANY, INC.; S AND H
MINING, INC.; SEQUOIA ENERGY,
LLC; TAMS MANAGEMENT, INC.;
VIRGINIA FUEL CORP.,

Defendants.

AFFIDAVIT OF TOM LUSK

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, to wit:

Affiant, Tom Lusk, upon being first duly sworn, deposes and says as follows:

1. I am the Chief Operating Officer of Bluestone Resources, Inc. Double Bonus Coal Company, Dynamic Energy, Inc., Frontier Coal Company, Inc., Justice Energy Company, Inc., Justice Highwall Mining, Inc., Keystone Service Industries, Inc. M&P Services, Inc., NuFac Mining Company, Inc., and Pay Car Mining, Inc. are all wholly-owned subsidiaries of Bluestone Resources, Inc.
2. In my capacity as the Chief Operating Officer of Bluestone Resources, Inc., I am knowledgeable regarding the operational, managerial and mining related activities of each of the entities identified in paragraph 1 above.
3. The entities identified in paragraph 1 above are not incorporated in the Commonwealth of Virginia and do not maintain their principal place of business in Virginia. The principal place of business for the entities identified in paragraph 1 above is in Daniels, West Virginia.
4. None of the entities identified in paragraph 1 above operate any coal mines in Virginia and have not operated any mines in Virginia during the time period at issue in the Complaint, which is May 3, 2014 to May 3, 2019. Additionally, none of these entities own any real property in Virginia and have not designated an agent for the service of process in Virginia.
5. None of the alleged mining conditions which led to the citations and assessments against the entities identified in paragraph 1 of the Complaint existed in Virginia. In other words, all mining related activity giving rise to the allegations of unpaid civil penalties for violations of mandatory health and safety standards in Plaintiff's Complaint against the entities identified in paragraph 1 occurred outside of the Commonwealth of Virginia.

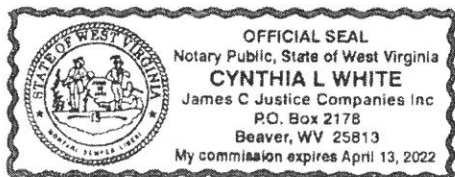
6. As the Chief Operating Officer of Bluestone Resources, Inc., I am ultimately responsible for directing the general business activities of the entities identified in paragraph 1. I maintain my office in Daniels, West Virginia. I do not have any office in Virginia.
7. To the extent the entities identified in paragraph 1 operate any coal mines or other facilities, day to day operational decisions are made by officials at the sites, which are located outside the Commonwealth of Virginia. For instance, all hiring and firing, engineering, staffing, and similar decisions are made outside of Virginia.
8. The accounting functions for the entities identified in paragraph 1 above are performed in our Daniels, West Virginia office. In fact, David Harrah is the Chief Financial Officer and he maintains his office in Daniels, West Virginia.
9. Patrick Graham is the official responsible for safety at the corporate level for the entities identified in paragraph 1 above. In this capacity, Mr. Graham receives communications from MSHA, including notices of proposed assessments for citations and orders issued by MSHA to the entities identified in paragraph 1 above. Mr. Graham receives these communications at his Daniels, West Virginia office. Mr. Graham also communicates with MSHA regarding safety and health issues for the entities identified in paragraph 1 from his Daniels, West Virginia office.

FURTHER AFFIANT SAYETH NOT.


Tom Lusk

Taken, subscribed and sworn before me this 9th day of July, 2019.

My Commission expires April 13, 2022




[Notary Public]